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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4602 of 2007

Shri Mallikarjun Shikshan
Prasarak Mandal ...Petitioner
V/s.
Shri Ramchandra Rayappa Fulari
and anr. ...Respondents

Mr.S.G.Kudle for the Petitioner
Mr.S.K.Chinchalikar, AGP for Respondent No.2

CORAM : B.H.MARLAPALLE,J.
DATED : 13th December, 2007

P.C.

. Heard Mr.Kudle, the Learned Counsel for the Petitioner Society. The Respondent No.1 was working as a Head Master and while he was due to retire on 31-5-2006 on attaining the age of superannuation, he was dismissed from service by an order dated 26-5-2006 i.e. just about 5 days before his retirement. It was alleged that he had caused financial loss to the tune of Rs. 2,29,375/- to the School and, therefore, he was initially suspended by an order dated 19-12-2005 and subsequently dismissed on 26-5-2006. The Respondent,therefore, filed Appeal No. 73/2006 before the School Tribunal challenging the order of dismissal dated 26-5-2006.

2. In the said Appeal the appellant-teacher filed an

application at Exhibit 30 on or about 28-3-2007 and submitted that the management was not processing the bills for settlement of his provident fund dues by the Education Officer inspite of the fact that he had attained the age of superannuation on 30-5-2006. This application was opposed by the present petitioner management by filing its reply at Exhibit 32. The School Tribunal by its order dated 21-4-2007 allowed the application at Exhibit 30. The order reads as under:-

> "The Education Officer is hereby directed to get prepared the bill for payment of provident fund amount of the appellant from his account no. EDN-SH-77/3498 and the amount be paid to the appellant within 7 days".

3. Being aggrieved by the above order passed below Exhibit 30, the Petitioner management filed an application for review at exhibit 39 and the same was dismissed on 30-4-2007. Hence, this petition.

4. Mr. Kudle,the Learned Counsel for the Petitioner management submitted that in an Appeal filed under Section 9 of the MEPS Act, 1977, it was not permissible for the School Tribunal to entertain an application at Exhibit 30 and allow the same. As per Mr.Kudle the order dated 21-4-2007 was without jurisdiction and,

therefore, it is required to be set aside.

5. The Education Officer (Secondary) Zilla Parishad, Solapur had filed an affidavit in reply and has pointed out that the appellant had put in 30 years of service as the Head Master of the Secondary School and towards the fag end of his service, he was charged of false, vague and flimsy charges and a farce of departmental enquiry was made and he was dismissed just 6 days before the date of his superannuation. It has been further stated that as per the order passed by the School Tribunal on 21-4-2007, the provident fund amount was released to the appellant by way of a Banker's cheque and it was credited to his account with the District Central Cooperative Bank, Solapur. The affidavit further states that the present Petitioner being one of the Directors of the said Bank, he used his power and ensured that the total provident fund amount was adjusted against the agricultural loan taken by the original appellant from the said Bank. The Education Officer has further stated that in any case the sanction and release of provident fund is the prerogative of the Education Department and the management was required to only process the bills. Admittedly, in the scheme of MEPS Rules, 1981 there is no provision that on dismissal of service in a case like the present one, the management has the right to withhold processing of provident fund bill when the

teacher had already attained the age of superannuation. When the teacher's appeal was pending and during the pendency of the same, the management was not processing the bills for clearance of the provident fund amount by the Education Officer, the appellant presented the application at Exhibit 30 and it cannot be said that the Tribunal was lacking judicial powers to entertain such an application which was complimentary to the main relief of quashing and setting aside the order of dismissal dated 26-5-2006. In my opinion the Tribunal was justified in entertaining the application and giving directions to the Education Officer. The impugned order has not given any directions to the present petitioners. I am,therefore, satisfied that the impugned order passed by the School Tribunal cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution. Petition is rejected summarily.

6. Needless to mention the pending appeal will have to be decided on its own merits.

[B.H.MARLAPALLE,J.]